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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID ANTHONY BANUET,

Defendant and Appellant.

D077783

(Super. Ct. No. SCE350635)

APPEAL from an order of the Superior Court of San Diego County,
Evan P. Kirvin, Judge. Affirmed.

Athena Shudde, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In September 2017, David Anthony Banuet pleaded guilty to 12 counts
of lewd acts on a child (Pen. Code,¹ § 288, subd. (a)). Banuet was sentenced
to a stipulated term of 30 years in prison.

¹ All further statutory references are to the Penal Code.

In May 2020, Banuet filed a petition under section 1170.91 to recall his sentence and to resentence after considering trauma he suffered while a member of military service. The trial court denied the petition in a written order. The court held that section 1170.91, by its express terms, did not apply to persons who were sentenced after January 1, 2015. Accordingly, Banuet was not eligible for recall of his sentence.

Banuet filed a timely notice of appeal.

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) indicating she has not been able to identify any arguable issues for reversal on appeal. Counsel asks the court to review the record for error as mandated by *Wende*. We offered Banuet the opportunity to file his own brief on appeal, but he has not responded.²

DISCUSSION

As we have noted, appellate counsel has filed a *Wende* brief and asks the court to review the record for error. To assist the court in its review, and in compliance with *Anders v. California* (1967) 386 U.S. 738 (*Anders*), counsel has identified the following possible issues that were considered in evaluating the potential merits of this appeal:

1. Whether the court erred in finding Banuet was statutorily ineligible for relief under section 1170.91; and
2. Whether the court's denial of Banuet's petition constituted prejudicial error.

We have reviewed the entire record as required by *Wende* and *Anders*. We have not discovered any arguable issues for reversal on appeal. Competent counsel has represented Banuet on this appeal.

² The facts of the underlying offenses are not relevant to the analysis of the order appealed from in this case.

DISPOSITION

The order denying Banuet's petition to recall his sentence under section 1170.91 is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

AARON, J.

IRION, J.